THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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DATED: 25-11-2005

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WRIT PETITION No.22922 OF 2005

Between:

N.Narayana . . .Petitioner

And

The Asst. Commissioner of Labour (C), Govt. of India,

Ramagundam, and others . .Respondents

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WRIT PETITION No.22922 OF 2005

O R D E R:

The petitioner was initially appointed as Floating Badli Filler in the Singareni Colleries Company Limited, in the year 1987. He earned promotion as Coal Filler in the year 1990. He sustained injury in an accident, which took place on 31-05-1990. On finding that he cannot discharge the functions attached to the post, which he was holding at that time, the respondents issued orders of

appointment to the petitioner as General Mazdoor Category-I, so that the petitioner can work on the surface.

The petitioner raised a dispute alleging that though he was issued orders of appointment as General Mazdoor after he sustained injuries in the accident, pay protection was not accorded to him. It is represented that the recognized union has espoused his cause and on account of persuasion, the respondents have engaged him as Acting Fan Operator, with effect from January, 2000. The respondents issued proceedings, dated 03-09-2005, transferring as many as 27 employees. The petitioner was temporarily transferred to work as Surface General Mazdoor in MK-4. He challenges the same.

In the counter-affidavit filed on behalf of the respondents, it is stated that the transfer of the petitioner as General Mazdoor became necessary on account of the fact that the mine, in which he was functioning as Acting Fan Operator, was closed and with a view to rehabilitate the petitioner, he was transferred as General Mazdoor, the post which he was holding on regular basis.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner, had urged several contentions including the one that the present transfer was affected, even while the conciliation proceedings are in progress and that the impugned order is violative of the provisions of the Industrial Disputes Act.

Sri Nandigama Krishna Rao, learned Standing Counsel for the respondents, on the other hand, submits that the Conciliation Officer has reported failure and in that view of the matter, it cannot be said that the proceedings are still pending. He has also stated that the petitioner is holding the same substantive post ever since 1991 and he cannot raise any objection at this stage.

The petitioner had to be accommodated in a lower category of post consequent upon sustaining injuries by him in an accident on
31-05-1990. The question as to whether he was entitled for pay protection, was the subject matter of the conciliation proceedings and it is, too early, to say anything finally about it, at this stage. The petitioner was posted as Acting Fan Operator in the year 2000 in Mine No.5-A. The present order of transferring him as General Mazdoor MK-4 became necessary on account of the closure of Mine No.5-A. Therefore, no exception can be taken for the action of the respondents in transferring the petitioner.

It is strongly urged that there are four vacancies of Acting Fan Operators at present and that the petitioner could have been accommodated in one of them. This Court is not fully posted with the facts as to the requirement of respondents at present or the necessity to fill the said vacancies. A further question would be as to the entitlement of the petitioner, vis-à-vis, the claims of other similarly situated persons. The fact that the petitioner came to be posted against such a vacancy, basically, indicates that he too can be considered for that purpose.

Therefore, the writ petition is disposed of directing that as and when the respondents fill the existing or future vacancies of Acting Fan Operators, the case of the petitioner shall also be considered taking into account the fact that he has already been engaged and was, in a way, reverted on account of closure of a Mine.

It is represented that the petitioner has not yet reported to the new place of transfer. One week time is granted for this purpose.

There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

25th NOVEMBER, 2005.

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